

**HON'BLE SRI JUSTICE BILAL NAZKI  
AND  
HON'BLE SRI JUSTICE G. BHAVANI PRASAD**

**WRIT PETITION No.20992 of 2006**

Date: 19-02-2007.

Between :

K.Neelakantha Reddy.

.....Petitioner

And

The State of Andhra Pradesh, rep. by its Secretary,  
Department of Revenue, Hyderabad & Others.

.....Respondents.

**HON'BLE SRI JUSTICE BILAL NAZKI  
AND  
HON'BLE SRI JUSTICE G. BHAVANI PRASAD**

**WRIT PETITION No.20992 of 2006**

**ORDER** : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned Counsel for the parties.

Though in the writ petition Sections 4 and 5 of the A.P. Entertainments Tax Act, 1939 (for short 'the Act') have been challenged, at the stage of hearing of the writ petition, the learned counsel for petitioner only submitted that Sections 4 and 5 of the Act should be struck down because these provisions treat the video parlour owners and cinema theatre owners at par. At both the places films are being exhibited and on the basis of this submission alone, we cannot go into the Constitutional validity of Sections 4 and 5 of the Act. The learned Standing Counsel for Commercial Taxes submitted that Sections 4 and 5 of the Act have been upheld by a judgment of this Court in **Alankar Theatre v. Entertainment Tax Officer, Warangal**<sup>[1]</sup>.

Coming to the merits of the case, the grievance of the petitioner is that tax has been charged by a notice dated 20<sup>th</sup> July 2006 from the petitioner for the years from 1994-95 to 2005-06. By this notice, an entertainment tax to the tune of Rs.7,99,580/- and a show tax of Rs.1,78,750/- has been demanded. The learned counsel for petitioner contends that show tax was levied in terms of clause (iii) of sub-section (1-A) of Section 4-A of the Act. By this clause, a tax of Rs.50/- on every show of a film on television screen exhibited through video cassette recorder was

imposed, but this provision i.e. Clause (iii) of sub-section (1-A) of Section 4-A of the Act was struck down by this Court by a judgment in **Golden Video Parlour v. Secretary, Revenue Department**<sup>[2]</sup>. As such, we do not think that respondents were right in demanding the show tax, which could only have been demanded under clause (iii) of sub-section (1-A) of Section 4-A of the Act, which has been struck down by this Court. As such, the demand relating to show tax to the tune of Rs.1,78,750/- is quashed.

Coming to the demand of entertainment tax, the learned counsel for petitioner made two submissions; one is that for the years from 1994-95 till 2001-02, there has been no assessment and secondly, there were concessions available to the theatre owners under various circulars and G.Os., which were not made available to the Video theatre owners. The learned counsel for respondents submits that from 1994-95 till 2001-02, the petitioner himself opted for tax being levied under Section 5 of the Act. Section 4 of the Act is the charging section under the Act, but there is an option given under Section 5 of the Act, which reads as under—

**“5. Option to pay tax in lieu of tax payable under Section 4:--**

- (1) In lieu of the tax payable under Section 4, in the case of entertainments held in the theatres specified in Column (2) of the Table below and located in the local areas specified in the corresponding entry in Column (1) of the said table, the proprietor thereof may at his option and subject to such conditions as may be prescribed, pay the amount of tax to the State Government every

week as specified in the corresponding entry in Column (3) thereof.

**THE TABLE**

| Local Authority                                                 | Theatre                                                    | Amount of Tax                                                   |
|-----------------------------------------------------------------|------------------------------------------------------------|-----------------------------------------------------------------|
| 1                                                               | 2                                                          | 3                                                               |
| (a)Municipal Corporations and the Secunderabad Contonment Area. | (i) Air Conditioned                                        | 25% of the gross collection capacity per show multiplied by 22. |
|                                                                 | (ii) Air Cooled                                            | 24% of the gross collection capacity per show multiplied by 22. |
|                                                                 | (iii) Ordinary (other than air conditioned and air cooled) | 21% of the gross collection capacity per show multiplied by 22. |
| (b) Selection Grade Municipalities.                             | (i) Air Conditioned                                        | 24% of the gross collection capacity per show multiplied by 22. |
|                                                                 | (ii) Air Cooled                                            | 23% of the gross collection capacity per show multiplied by 22. |
|                                                                 | (iii) Ordinary (other than air conditioned and air cooled) | 20% of the gross collection capacity per show multiplied by 22. |

|                                   |                                                                                                              |                                                                                                                                                                                                               |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (c) Special Grade Municipalities. | (i) Air Conditioned<br><br>(ii) Air Cooled<br><br>(iii) Ordinary (other than air conditioned and air cooled) | 23% of the gross collection capacity per show multiplied by 21.<br><br>22% of the gross collection capacity per show multiplied by 21.<br><br>19% of the gross collection capacity per show multiplied by 21. |
| (d) First Grade Municipalities    | (i) Air Conditioned<br><br>(ii) Air Cooled<br><br>(iii) Ordinary (other than air conditioned and air cooled) | 22% of the gross collection capacity per show multiplied by 21.<br><br>21% of the gross collection capacity per show multiplied by 21.<br><br>18% of the gross collection capacity per show multiplied by 21. |
| (e) Second Grade Municipalities.  | All categories.                                                                                              | 17% of the gross collection capacity per show multiplied by 21.                                                                                                                                               |
| (f) Third Grade Municipalities    | All Categories                                                                                               | 16% of the gross collection capacity per show multiplied by 17.                                                                                                                                               |

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(g) Grampanchayats, Townships and any other local authorities:--</p> <p>(1) With a population of 15,000 and above.</p> <p>(2) With a population of 7,500 and above but below 15,000.</p> <p>(3) With a population of less than 7,500.</p> | <p>(i) Permanent and semi-permanent</p> <p>(ii) Touring and temporary</p> <p>(i) Permanent and semi-permanent</p> <p>(ii) Touring and temporary</p> <p>(i) Permanent and semi-permanent</p> <p>(ii) Touring and temporary</p> | <p>15% of the gross collection capacity per show multiplied by 14.</p> <p>14% of the gross collection capacity per show multiplied by 10.</p> <p>14% of the gross collection capacity per show multiplied by 14.</p> <p>13% of the gross collection capacity per show multiplied by 10.</p> <p>13% of the gross collection capacity per show multiplied by 14.</p> <p>13% of the gross collection capacity per show multiplied by 7.</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

So, once an assessee gives an option under Section 5 of the Act that he should be taxed in accordance with the method under Section 5 of the Act, no formal assessment appears to be necessary because, it is merely a formula that has to be adopted

and the petitioner moved applications for these years and one of the applications which has been annexed with the counter affidavit is an application in Form-III in terms of Rule 27 of the A.P. Entertainment Tax Act Rules, 1939 (for short 'the Rules'). Opposite to column 8 in this application, the petitioner himself wrote an amount of Rs.2,218/- and this column reads, "*The amount of tax payable every week with reference to the Gross collection capacity worked out in column 7 above read with section 5(1) of the Andhra Pradesh Entertainments Tax Act*". As a matter of fact, Form-III under Rule 27 of the Rules show that it is some sort of self-assessment of tax and the petitioner himself assessed tax at Rs.2,218/- per week. Similarly, for other years, same procedure is adopted and weekly taxes have not been paid therefore, the demand was raised from 1994-95 to 2001-02. We do not find any illegality in the demand. From 2002-03 to 2005-06, assessment orders have been passed, which are also part of the annexures to the counter affidavit. These assessment orders are challengeable in appeal and appeal has not been filed, and on questions of fact, it will be difficult for this Court to see whether the assessments made are correct or not.

For these reasons, we allow the writ petition to the extent of quashing the demand on account of show tax. On other issues, the writ petition is dismissed. No costs.

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BILAL NAZKI, J

19<sup>th</sup> February 2007.

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G. BHAVANI PRASAD, J

ajr

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[\[1\]](#) 82 STC 417

[\[2\]](#) 86 STC 67